

---

---

# HOUSE BILL No. 1689

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-3.

**Synopsis:** Worker's compensation awards and travel reimbursement. Requires the employer to pay reasonable travel expenses to the employee from the place the employee begins travel (either the employee's residence or place of employment) to the place of treatment, when the employer requests or requires the employee to submit to treatment outside the employee's county of employment. Increases from two to five years the period in which an award may be modified. Eliminates the one year period to file applications for increased permanent partial impairment.

**Effective:** July 1, 2005.

---

---

### Oxley

---

---

January 19, 2005, read first time and referred to Committee on Employment and Labor.

---

---

C  
o  
p  
y



Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1689

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 22-3-3-4 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) After an injury and prior to  
3 an adjudication of permanent impairment, the employer shall furnish  
4 or cause to be furnished, free of charge to the employee, an attending  
5 physician for the treatment of ~~his~~ **the employee's** injuries, and in  
6 addition thereto such surgical, hospital, and nursing services and  
7 supplies as the attending physician or the worker's compensation board  
8 may deem necessary. If the employee is requested or required by the  
9 employer to submit to treatment outside the county of employment, the  
10 employer shall also pay the reasonable expense of travel **from the**  
11 **place the employee begins travel, either the employee's:**  
12       (1) residence; or  
13       (2) place of employment;  
14 **to the place of treatment, and** food and lodging necessary during the  
15 travel, but not to exceed the amount paid at the time of the travel by the  
16 state to its employees under the state travel policies and procedures  
17 established by the **Indiana** department of administration and approved

2005

IN 1689—LS 7508/DI 102+



C  
o  
p  
y

1 by the ~~state~~ budget agency. If the treatment or travel to or from the  
 2 place of treatment causes a loss of working time to the employee, the  
 3 employer shall reimburse the employee for the loss of wages using the  
 4 basis of the employee's average daily wage.

5 (b) During the period of temporary total disability resulting from the  
 6 injury, the employer shall furnish the physician services, and supplies,  
 7 and the worker's compensation board may, on proper application of  
 8 either party, require that treatment by the physician and services and  
 9 supplies be furnished by or on behalf of the employer as the worker's  
 10 compensation board may deem reasonably necessary.

11 (c) After an employee's injury has been adjudicated by agreement  
 12 or award on the basis of permanent partial impairment and within the  
 13 statutory period for review in such case as provided in section 27 of  
 14 this chapter, the employer may continue to furnish a physician or  
 15 surgeon and other medical services and supplies, and the worker's  
 16 compensation board may within the statutory period for review as  
 17 provided in section 27 of this chapter, on a proper application of either  
 18 party, require that treatment by that physician and other medical  
 19 services and supplies be furnished by and on behalf of the employer as  
 20 the worker's compensation board may deem necessary to limit or  
 21 reduce the amount and extent of the employee's impairment. The  
 22 refusal of the employee to accept such services and supplies, when  
 23 provided by or on behalf of the employer, shall bar the employee from  
 24 all compensation otherwise payable during the period of the refusal,  
 25 and ~~his~~ **the employee's** right to prosecute any proceeding under  
 26 IC 22-3-2 through IC 22-3-6 shall be suspended and abated until the  
 27 employee's refusal ceases. The employee must be served with a notice  
 28 setting forth the consequences of the refusal under this section. The  
 29 notice must be in a form prescribed by the worker's compensation  
 30 board. No compensation for permanent total impairment, permanent  
 31 partial impairment, permanent disfigurement, or death shall be paid or  
 32 payable for that part ~~or portion~~ of the impairment, disfigurement, or  
 33 death which is the result of the failure of the employee to accept the  
 34 treatment, services, and supplies required under this section. However,  
 35 an employer may at any time permit an employee to have treatment for  
 36 ~~his~~ **the employee's** injuries by spiritual means or prayer ~~in lieu~~ **instead**  
 37 of the physician or surgeon and other medical services and supplies  
 38 required under this section.

39 (d) If, because of an emergency, or because of the employer's failure  
 40 to provide an attending physician or surgical, hospital, or nursing  
 41 services and supplies, or treatment by spiritual means or prayer, as  
 42 required by this section, or because of any other good reason, a

C  
o  
p  
y



1 physician other than that provided by the employer treats the injured  
 2 employee during the period of the employee's temporary total  
 3 disability, or necessary and proper surgical, hospital, or nursing  
 4 services and supplies are procured within the period, the reasonable  
 5 cost of those services and supplies shall, subject to the approval of the  
 6 worker's compensation board, be paid by the employer.

7 (e) Regardless of when it occurs, where a compensable injury  
 8 results in the amputation of a body part, the enucleation of an eye, or  
 9 the loss of natural teeth, the employer shall furnish an appropriate  
 10 artificial member, braces, and prosthodontics. The cost of repairs to or  
 11 replacements for the artificial members, braces, or prosthodontics that  
 12 result from a compensable injury pursuant to a prior award and are  
 13 required due to either medical necessity or normal wear and tear,  
 14 determined according to the employee's individual use, but not abuse,  
 15 of the artificial member, braces, or prosthodontics, shall be paid from  
 16 the second injury fund upon order or award of the worker's  
 17 compensation board. The employee is not required to meet any other  
 18 requirement for admission to the second injury fund.

19 (f) If an accident arising out of and in the course of employment  
 20 after June 30, 1997, results in the loss of or damage to an artificial  
 21 member, a brace, an implant, eyeglasses, prosthodontics, or other  
 22 medically prescribed device, the employer shall repair the artificial  
 23 member, brace, implant, eyeglasses, prosthodontics, or other medically  
 24 prescribed device or furnish an identical or a reasonably equivalent  
 25 replacement.

26 (g) This section may not be construed to prohibit an agreement  
 27 between an employer and the employer's employees that has the  
 28 approval of the board and that binds the parties to:

29 (1) medical care furnished by health care providers selected by  
 30 agreement before or after injury; or

31 (2) the findings of a health care provider who was chosen by  
 32 agreement.

33 SECTION 2. IC 22-3-3-27 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) The power and  
 35 jurisdiction of the worker's compensation board over each case shall be  
 36 continuing and from time to time it may, upon its own motion or upon  
 37 the application of either party, on account of a change in conditions,  
 38 make such modification or change in the award ending, lessening,  
 39 continuing, or extending the payments previously awarded, either by  
 40 agreement or upon hearing, as it may deem just, subject to the  
 41 maximum and minimum provided for in IC 22-3-2 through IC 22-3-6.

42 (b) Upon making any such change, the board shall immediately send

C  
o  
p  
y



to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

(c) The board shall not **have jurisdiction to** make any ~~such~~ modification upon its own motion ~~nor shall or upon~~ any application ~~therefor be~~ filed by either party after the expiration of ~~two (2)~~ **five (5)** years from the last day for which compensation was paid under the original award made either by agreement or upon hearing. ~~except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid.~~ The board may at any time correct any clerical error in any finding or award.

SECTION 3. IC 22-3-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) During the period of disablement, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of ~~his~~ **the employee's** occupational disease, and in addition thereto such surgical, hospital, and nursing services and supplies as the attending physician or the worker's compensation board may deem necessary. If the employee is requested or required by the employer to submit to treatment outside the county of employment, the employer shall also pay the reasonable expense of travel **from the place the employee begins travel, either the employee's:**

**(1) residence; or**

**(2) place of employment;**

**to the place of treatment, and** food and lodging necessary during the travel, but not to exceed the amount paid at the time of the travel by the state ~~of Indiana~~ to its employees. If the treatment or travel to or from the place of treatment causes a loss of working time to the employee, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average daily wage.

(b) During the period of disablement resulting from the occupational disease, the employer shall furnish such physician, services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by such physician and such services and supplies be furnished by or on behalf of the employer as the board may deem reasonably necessary. After an employee's occupational disease has been adjudicated by agreement or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27(i) of this chapter, the employer may continue to furnish a physician or a surgeon and other medical services and supplies, and the board may, within

C  
o  
p  
y



1 such statutory period for review as provided in section 27(i) of this  
 2 chapter, on a proper application of either party, require that treatment  
 3 by such physician or surgeon and such services and supplies be  
 4 furnished by and on behalf of the employer as the board may deem  
 5 necessary to limit or reduce the amount and extent of such impairment.  
 6 The refusal of the employee to accept such services and supplies when  
 7 so provided by or on behalf of the employer, shall bar the employee  
 8 from all compensation otherwise payable during the period of such  
 9 refusal and ~~his~~ **the employee's** right to prosecute any proceeding under  
 10 this chapter shall be suspended and abated until such refusal ceases.  
 11 The employee must be served with a notice setting forth the  
 12 consequences of the refusal under this section. The notice must be in  
 13 a form prescribed by the worker's compensation board. No  
 14 compensation for permanent total impairment, permanent partial  
 15 impairment, permanent disfigurement, or death shall be paid or payable  
 16 for that part or portion of such impairment, disfigurement, or death  
 17 which is the result of the failure of such employee to accept such  
 18 treatment, services, and supplies, provided that an employer may at any  
 19 time permit an employee to have treatment for ~~his~~ **the employee's**  
 20 disease or injury by spiritual means or prayer ~~in lieu~~ **instead** of such  
 21 physician, services, and supplies.

22 (c) Regardless of when it occurs, where a compensable occupational  
 23 disease results in the amputation of a body part, the enucleation of an  
 24 eye, or the loss of natural teeth, the employer shall furnish an  
 25 appropriate artificial member, braces, and prosthodontics. The cost of  
 26 repairs to or replacements for the artificial members, braces, or  
 27 prosthodontics that result from a compensable occupational disease  
 28 pursuant to a prior award and are required due to either medical  
 29 necessity or normal wear and tear, determined according to the  
 30 employee's individual use, but not abuse, of the artificial member,  
 31 braces, or prosthodontics, shall be paid from the second injury fund  
 32 upon order or award of the worker's compensation board. The  
 33 employee is not required to meet any other requirement for admission  
 34 to the second injury fund.

35 (d) If an emergency or because of the employer's failure to provide  
 36 such attending physician or such surgical, hospital, or nurse's services  
 37 and supplies or such treatment by spiritual means or prayer as specified  
 38 in this section, or for other good reason, a physician other than that  
 39 provided by the employer treats the diseased employee within the  
 40 period of disability, or necessary and proper surgical, hospital, or  
 41 nurse's services and supplies are procured within the period, the  
 42 reasonable cost of such services and supplies shall, subject to approval

C  
o  
p  
y



of the worker's compensation board, be paid by the employer.

(e) This section may not be construed to prohibit an agreement between an employer and employees that has the approval of the board and that:

(1) binds the parties to medical care furnished by providers selected by agreement before or after disablement; or

(2) makes the findings of a provider chosen in this manner binding upon the parties.

(f) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this chapter is solely with the board. All claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under this chapter.

SECTION 4. IC 22-3-7-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) If the employer and the employee or the employee's dependents disagree in regard to the compensation payable under this chapter, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the worker's compensation board, and afterward disagree as to the continuance of payments under such agreement, or as to the period for which payments shall be made, or as to the amount to be paid, because of a change in conditions since the making of such agreement, either party may then make an application to the board for the determination of the matters in dispute. When compensation which is payable in accordance with an award or by agreement approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned.

(b) The application making claim for compensation filed with the worker's compensation board shall state the following:

(1) The approximate date of the last day of the last exposure and the approximate date of the disablement.

(2) The general nature and character of the illness or disease claimed.

(3) The name and address of the employer by whom employed on the last day of the last exposure, and if employed by any other employer after such last exposure and before disablement, the name and address of such other employer or employers.

(4) In case of death, the date and place of death.

(5) Amendments to applications making claim for compensation which relate to the same disablement or disablement resulting in

**C  
O  
P  
Y**



1 death originally claimed upon may be allowed by the board in its  
 2 discretion, and, in the exercise of such discretion, it may, in  
 3 proper cases, order a trial de novo. Such amendment shall relate  
 4 back to the date of the filing of the original application so  
 5 amended.

6 (c) Upon the filing of such application, the board shall set the date  
 7 of hearing, which shall be as early as practicable, and shall notify the  
 8 parties, in the manner prescribed by the board, of the time and place of  
 9 hearing. The hearing of all claims for compensation on account of  
 10 occupational disease shall be held in the county in which the last  
 11 exposure occurred or in any adjoining county, except when the parties  
 12 consent to a hearing elsewhere. Claims assigned to an individual board  
 13 member that are considered to be of an emergency nature by that board  
 14 member, may be heard in any county within the board member's  
 15 jurisdiction.

16 (d) The board by any or all of its members shall hear the parties at  
 17 issue, their representatives, and witnesses, and shall determine the  
 18 dispute in a summary manner. The award shall be filed with the record  
 19 of proceedings, and a copy thereof shall immediately be sent by  
 20 registered mail to each of the parties in dispute.

21 (e) If an application for review is made to the board within thirty  
 22 (30) days from the date of the award made by less than all the  
 23 members, the full board, if the first hearing was not held before the full  
 24 board, shall review the evidence, or, if deemed advisable, hear the  
 25 parties at issue, their representatives, and witnesses as soon as  
 26 practicable, and shall make an award and file the same with the finding  
 27 of the facts on which it is based and send a copy thereof to each of the  
 28 parties in dispute, in like manner as specified in subsection (d).

29 (f) An award of the board by less than all of the members as  
 30 provided in this section, if not reviewed as provided in this section,  
 31 shall be final and conclusive. An award by the full board shall be  
 32 conclusive and binding unless either party to the dispute, within thirty  
 33 (30) days after receiving a copy of such award, appeals to the court of  
 34 appeals under the same terms and conditions as govern appeals in  
 35 ordinary civil actions. The court of appeals shall have jurisdiction to  
 36 review all questions of law and of fact. The board, of its own motion,  
 37 may certify questions of law to the court of appeals for its decision and  
 38 determination. An assignment of errors that the award of the full board  
 39 is contrary to law shall be sufficient to present both the sufficiency of  
 40 the facts found to sustain the award and the sufficiency of the evidence  
 41 to sustain the finding of facts. All such appeals and certified questions  
 42 of law shall be submitted upon the date filed in the court of appeals,

**C**  
**O**  
**P**  
**Y**





shall be advanced upon the docket of the court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs. An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent (5%), and by order of the court may be increased ten percent (10%).

(g) Upon order of the worker's compensation board made after five (5) days notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the disablement occurred a certified copy of the memorandum of agreement, approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment has been rendered in a suit duly heard and determined by the court. Any such judgment of such circuit or superior court, unappealed from or affirmed on appeal or modified in obedience to the mandate of the court of appeals, shall be modified to conform to any decision of the industrial board ending, diminishing, or increasing any weekly payment under the provisions of subsection (i) upon the presentation to it of a certified copy of such decision.

(h) In all proceedings before the worker's compensation board or in a court under the compensation provisions of this chapter, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court.

(i) The power and jurisdiction of the worker's compensation board over each case shall be continuing, and, from time to time, it may, upon its own motion or upon the application of either party on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this chapter. When compensation which is payable in accordance with an award or settlement contract approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned. Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder. The board shall not **have jurisdiction to** make any ~~such~~ modification upon its own motion ~~nor shall or upon~~ any application ~~therefor be~~ filed by either party after the expiration of ~~two (2)~~ **five (5)**

C  
o  
p  
y



years from the last day for which compensation was paid under the original award made either by agreement or upon hearing. ~~except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid.~~ The board may at any time correct any clerical error in any finding or award.

(j) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Such physician or surgeon shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such physician or surgeon shall be paid by the state only on special order of the board or a member thereof.

(k) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified industrial hygienist, industrial engineer, industrial physician, or chemist to make any necessary investigation of the occupation in which the employee alleges that ~~he~~ **the employee** was last exposed to the hazards of the occupational disease claimed upon, and testify with respect to the occupational disease health hazards found by such person or persons to exist in such occupation. Such person or persons shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such persons shall be paid by the state, only on special order of the board or a member thereof.

(l) Whenever any claimant misconceives the claimant's remedy and files an application for adjustment of a claim under IC 22-3-2 through IC 22-3-6 and it is subsequently discovered, at any time before the final disposition of such cause, that the claim for injury or death which was the basis for such application should properly have been made under the provisions of this chapter, then the application so filed under IC 22-3-2 through IC 22-3-6 may be amended in form or substance or both to assert a claim for such disability or death under the provisions of this chapter, and it shall be deemed to have been so filed as amended on the date of the original filing, thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this chapter. When such amendment is submitted, further or additional evidence may be heard by the worker's compensation board when deemed necessary. Nothing in this section contained shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice or time for filing a claim, but notice of filing of a claim, if given or done, shall be deemed to be a notice or

C  
o  
p  
y



- 1 filing of a claim under the provisions of this chapter if given or done
- 2 within the time required in this chapter.

**c  
o  
p  
y**

